IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.Rev.Pet.No. 445 of 2007()

CRA.36/2006 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM
CC.67/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED

MAJEED, AGED 64 YEARS,
PROPRIETOR, M/S.FEROZ AUTOS,
MEDICAL COLLEGE JUNCTION,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.PEETHAMBARAN
SRI.K.RAVIKUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. J.M.J. AGENCIES (P) LTD.,
34/1744, N.H.47, EDAPPALLY,
KOCHI - 24, REPRESENTED BY ITS
DIRECTOR P.G.MATHEW.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LATHA.T.THANKAPPAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR.J

Crl.R.P No.445 OF 2007

Dated this the 1st day of February 2007

ORDER

The accused in C.C. No.67/2002 on the file of the Judicial First Class Magistrate Court-I , Ernakulam is the revision petitioner. He was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for three months and to pay an amount of Rs. 10,600/- to the complainant as compensation and in default of payment of compensation to undergo simple imprisonment for three more months. Petitioner filed Crl.Appeal 36/2006. The learned Addl. Sessions Judge modified and reduced the substantive sentence to simple imprisonment for 15 days. The direction to pay the compensation and default sentence were confirmed. Challenging that conviction and sentence this Crl.R.P is filed.

2. The complaint was filed by the first respondent alleging that the petitioner issued Ext.P1 cheque in discharge of a legally recoverable debt. He gave evidence to the effect that when the cheque was presented for collection the same was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. On receipt of Dishonour Memo he issued original of Ext.P4 notice . The revision

petitioner received the same but did not repay the amount. The complaint was filed observing all formalities .

3. The learned Magistrate as well as the learned Sessions Judge found that the cheque was issued in discharge of a legally recoverable debt. The petitioner admits the signature. The petitioner did not adduce any evidence to substantiate his contention that the cheque was not supported by consideration So the finding of the Court below that the petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is correct and only to be confirmed.

4. The learned Counsel appearing for the revision petitioner has argued that the sentence imposed is highly excessive. Considering the quantum of the amount involved the sentence imposed is on the higher side. I am of the view that imprisonment till the rising of court is sufficient to meet the ends of justice. The compensation awarded is reasonable and does not call for any interference. But the default sentence of simple imprisonment for three months can be modified and reduced to simple imprisonment for one month. The petitioner can be given three months time to pay the compensation also.

In the result, the Crl.R.P. is disposed of in the following manner The finding of the court below that the petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. The conviction is also confirmed. The substantive sentence imposed is modified and reduced to imprisonment till the rising of Court The compensation awarded is confirmed. But the default sentence imposed is modified and reduced to simple imprisonment for one month The petitioner is given three months time from today to pay the compensation amount and to appear and receive the sentence. In case the petitioner fails to comply with the condition the learned Magistrate can execute the sentence after the expiry of three months.

K.PADMANABHAN NAIR,JUDGE

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